

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

STEVEN KENNETH ADAMS,

Petitioner,

File No. 2:12-CV-112

v.

HON. ROBERT HOLMES BELL

CATHERINE BAUMAN,

Respondent.

**ORDER ADOPTING REPORT AND RECOMMENDATION
AND DISMISSING PETITION FOR WRIT OF HABEAS CORPUS**

This matter is before the Court on Petitioner Steven Kenneth Adams's objections to the Magistrate Judge's May 15, 2012, Report and Recommendation ("R&R") recommending that Petitioner's motion for summary judgment (Dkt. No. 6) be denied and that Petitioner's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 (Dkt. No. 1) be dismissed with prejudice pursuant to Rule 4 of the Rules Governing § 2254 Cases, because it plainly appears from the petition and the attached exhibits that the petition lacks merit. (Dkt. No. 7, R&R.) Petitioner filed objections to the R&R on May 29, 2012. (Dkt. No. 13.) Petitioner has also filed a motion for hearing. (Dkt. No. 11.)

This Court is required to make a *de novo* determination of those portions of the R&R to which objection has been made and may accept, reject, or modify any or all of the Magistrate Judge's findings or recommendations. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P.

72(b). Although the Magistrate Judge's R&R is reviewed *de novo*, this Court must review the state court proceedings consistent with the standards set forth in 28 U.S.C. § 2254.

Petitioner contends that the R&R improperly concluded that the decision in *Thomas v. Eby*, 481 F.3d 434 (6th Cir. 2007), governs his claim. Petitioner contends that his claim is not barred by *Thomas* because he has raised a constitutional challenge to the disciplinary credit statute based on the Michigan Department of Corrections' failure to promulgate rules as required by the statute. *See* Mich. Comp. Laws § 800.33(5) ("The department of corrections shall promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, necessary to implement this subsection not more than 180 days after December 30, 1982.") Contrary to Petitioner's assertions, the Department of Corrections has promulgated rules to implement the disciplinary credit statute. *See* Mich. Admin. Code R. 791.5513 (re forfeiture of good time and disciplinary credit); *see also Tessin v. Dep't of Corr.*, 495 N.W.2d 397, 400 (Mich. Ct. App. 1992) (holding that in light of Rule 791.5513, the warden does not have unfettered discretion to forfeit disciplinary credits in violation of due process). Petitioner has failed to demonstrate a liberty interest that was implicated by the forfeiture, refusal to restore, or the refusal to award disciplinary credits. Accordingly,

Petitioner also objects to the R&R based on his contention that the Magistrate Judge exceeded his authority by acting as an attorney for respondent in recommending dismissal of this case. Petitioner's contention lacks merit. Upon the filing of a § 2254 petition, the district court is required to promptly examine the petition and to dismiss it if it plainly

appears that petitioner is not entitled to relief. Rule 4, Rules Governing § 2254 Cases. The Magistrate Judge was fulfilling his statutory duties when he recommended dismissal of the petition. Accordingly,

IT IS HEREBY ORDERED that Petitioner's objections to the R&R (Dkt. No. 13) are **OVERRULED**.

IT IS FURTHER ORDERED that Petitioner's motion for summary judgment (Dkt. No. 6) is **DENIED**.

IT IS FURTHER ORDERED that Petitioner's motion for hearing (Dkt. No. 11) is **DENIED**.

IT IS FURTHER ORDERED that the May 15, 2012, R&R (Dkt. No. 7) is **APPROVED** and **ADOPTED** as the opinion of the Court.

IT IS FURTHER ORDERED that Petitioner's petition for writ of habeas corpus (Dkt. No. 1) is **DISMISSED WITH PREJUDICE**.

IT IS FURTHER ORDERED that a certificate of appealability is **DENIED**.

Dated: March 28, 2013

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE